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DORSEY & WHITNEY, LLP
INTELLECTUAL PROPERTY DEPARTMENT
370 SEVENTEENTH STREET
SUITE 4700
DENVER, CO 80202-5647

EXAMINER

HWANG, VICTOR KENNY

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3764

12

DATE MAILED: 08/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

EC

Office Action Summary

Application No.

09/848,105

Applicant(s)

MOSIMANN ET AL.

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6,8-10,12-23 and 25-34 is/are rejected.
- 7) ☒ Claim(s) 2,3,5,7,21,24,26 and 34 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 April 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,8,11 . 6) ☐ Other: _____

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: on page 9, lines 1-10, the description of the invention does not appear to accurately reflect the invention as shown in the drawings.

Appropriate correction is required.

Claim Objections

2. Claims 2, 3, 5, 21, 26 and 34 are objected to because of the following informalities:

in claim 2, the recitation "the front frame" on line 2 lacks proper antecedent basis and presumably refers to a front portion of the frame;

in claim 3, the recitation "plate" on line 8 presumably should be changed to --front frame portion-- to accurately describe the four-bar linkage;

in claim 5, the recitation "the top link" on line 2 lacks proper antecedent basis and presumably refers to the top link recited in claim 3, and therefore, for purposes of examination, claim 5 is presumed to be dependent from claim 3 and not from claim 4;

in claim 21, the recitation "the front frame" on line 2 lacks proper antecedent basis and presumably refers to a front portion of the frame;

in claim 26, the recitation "the foot press plate mechanism" lacks proper antecedent basis and presumably refers to the foot press plate; and

in claim 34, "links" presumably should be changed to --link--. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 2, 8-10, 12, 13, 15-21, 25, 26 and 28-34 are rejected under 35

U.S.C. 102(b) as being anticipated by *Gottlob* (German 94 11 573.7). *Gottlob* discloses an exercise device comprising a frame 47; a body extension mechanism including a press plate mechanism 5-10 operably connected to the frame; a seat structure having a seat 31 and a back support 18, the back support being pivotally connected at shaft 44 to the frame; and a transfer link 27 having a first end and a second end 28, the first end being operably connected with the press plate mechanism, and the second end being operably connected with the back support. The press plate mechanism includes at least one link 6 pivotally connected with a front portion of the frame. A weight stack having at least one weight plate 46 is operably connected to the body extension mechanism by a cable. Movement of the body extension mechanism causes movement of the transfer link which tensions the cable to move the at least one weight of the weight stack and also causes movement of the back support.

As applied to claims 12-21 in particular, the exercise device comprises a frame 47; a foot press plate 5 pivotally connected with the frame, a seat structure 18 pivotally connected

with the frame; and a transfer mechanism 6-10,27 connected between the foot press plate and the seat structure so that movement of the seat structure is coordinated with movement of the foot press plate. The transfer link includes a first portion 6 pivotally connected with the foot press plate and a second portion 27 pivotally connected with the seat structure. The seat structure includes a pivotal back support 18. The body extension mechanism includes the foot press plate 5, the seat structure 18, and the transfer link 6-10,27. A weight stack 46 is operably connected with the body extension mechanism, and therefore is operably connected to the foot press plate, the seat structure, and the transfer link. The foot press plate includes at least one link 6 pivotally connected with a front portion of the frame.

The foot press plate 5 has a foot press plate rest position (Fig. 3) and at least a second foot press plate position (Fig. 4). The seat structure has a seat structure rest position (Fig. 3) and at least a second seat structure position (Fig. 4). Movement of the press plate is coordinated with the seat structure such that the at least a second foot press plate position is further away from the seat structure than the foot press plate rest position and the at least a second seat structure position is further away from the foot press plate than the seat structure rest position. The pivotal seat back 18 pivots away from the foot press plate 5.

5. Claims 1, 2, 4, 12, 13, 15, 16, 21-23, 25 and 27-34 are rejected under 35 U.S.C. 102(b) as being anticipated by *Chen* (US Pat. 5,527,243). *Chen* discloses an exercise device comprising a frame 10; a body extension mechanism including a press plate 31 mechanism operably connected to the frame; a seat structure having a seat 21 and back support 25, the back support being pivotally connected 23 with the frame; and a transfer link 26 having

a first end pivotally connected to the foot press plate and a second end pivotally connected to the seat structure.

The press plate mechanism includes at least one link 30 pivotally connected with a front frame portion. At least one shock 27 (also reads upon the first link of claims 22, 23 and 27) is operably connected between the press plate mechanism and the frame. The transfer link 26 coordinates movement of the back support 25 of the seat structure with movement of the foot press plate 31. The foot press plate 31 includes a top link 30; the foot press plate 31 connected with the top link 30; a first link 27 (also reads upon the at least one shock of claim 4) pivotally connected with the top link 30, the first link pivotally connected with the frame at 12; and a second link 50 pivotally connected with the top link 30 at 51, the second link pivotally connected with the frame at 12 via pivot 43.

The foot press plate 31 has a foot press plate rest position (Fig. 3) and at least a second foot press plate position (Fig. 4) wherein the at least a second foot press plate position is further away from the seat structure than the foot press plate rest position. The seat structure has at least a second seat structure position (Fig. 4) further away from the foot press plate than a seat structure rest position (Fig. 3). Note that the seat structure includes the pivotal seat back support 25 which pivots away from the foot press plate between the seat structure rest position and the at least a second seat structure position.

6. Claims 1, 2 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by *Yu* (US Pat. 5,580,340). *Yu* discloses an exercise device comprising a frame 10; a body extension mechanism including a press plate mechanism 51 operably connected to the frame; a seat

structure having a seat 31 and back support 41, the back support being pivotally connected via link 43 or 32 with the frame; and a transfer link 53 having a first end 532 and a second end 531, the first end being operably connected at 521 with the press plate mechanism, and the second end being operably connected at 331 via links 32 and 33 with the back support 41. The link has a front portion 532 defining a channel and a rear link portion 531, the rear link portion being insertable in the channel so that the length of the transfer link 53 is adjustable. The press plate mechanism includes at least one link 52 pivotally connected with a front portion of the frame.

7. Claims 25 and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by *Ellis* (US Pat. 6,264,588 B1). *Ellis* discloses a frame 16; a foot press plate 22C pivotally connected with the frame; and a seat structure 12 having a pivotal back support 20 connected with the foot press plate. A weight stack 94 is operably connected with the foot press plate 22C.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Yu* (US Pat. 5,580,340) in view of *Lui et al.* (US Pat. 5,533,953). *Yu* has been discussed above, and

such discussion is incorporated herein. *Yu* discloses the invention as claimed except for the foot press plate mechanism 51 including a foot press plate (claim 12). *Yu* discloses a rod 512 for engagement with a user's feet.

Lui et al. discloses an analogous exercise device wherein the foot press plate mechanism 60 includes foot press plates 62 for engagement with the user's feet. *Lui et al.* shows that foot press plates are an equivalent structure known in the art. Therefore, because these two foot engagements were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the foot press plates 62 of *Lui et al.* for the rod 512 of *Yu*.

Allowable Subject Matter

10. Claim 11 is allowed.

11. Claims 3, 5, 7 and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not disclose the invention as claimed wherein the foot press plate forms a part of a four bar linkage, as described, linked to a seat structure with a pivotal back support (claims 3, 5 and 24). The prior art also does not disclose or make obvious the claimed invention wherein the seat structure includes an over-center adjustment for adjusting the

orientation of the back support (claim 7), though the prior art does disclose an over-center adjustment for a back support as in *DeLorme, Jr. et al.*, US Pat. 3,326,366. The prior art also does not disclose the claimed exercise device comprising the pulley and cable mechanism as described (claim 11).

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

DeLorme, Jr. et al. (US Pat. 3,323,366) discloses an exercise device comprising a back support 41 having an over-center adjustment 71.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (703) 308-2865. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time. The facsimile number for submitting papers directly to the examiner for informal correspondence is (703) 746-4891. The facsimile number for submitting Official papers to Technology Center 3700 is (703) 872-9302 and for submitting papers After Final to Technology Center 3700 is (703) 872-9303.

Any Inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 3700 receptionist at (703) 308-0858.



NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700



Victor K. Hwang
July 28, 2003